

Defendant's Exhibit

F

ROBERT L. FOLKS & ASSOCIATES, LLP

ATTORNEYS AT LAW

510 BROAD HOLLOW ROAD, SUITE 305

MELVILLE, NEW YORK 11747

ROBERT L. FOLKS
CYNTHIA A. KOURIL

(631) 845-1900

THOMAS L. COSTA
OF COUNSEL

TELECOPIER: (631) 845-8779

March 25, 2003

VIA FACSIMILE (631) 712-5725

Honorable William D. Wall
United States Magistrate Judge
US Federal Courthouse
100 Federal Plaza
Central Islip, NY 11722-4438

**Re: Robert Novak d/b/a Pets Warehouse.com v. Active Window
Productions, Mark Rosenstein, Cynthia S. Powers, Dan Resler,
Jared Weinberger, Thomas Barr, "John Doe" and "Mary Roe"
CV 01-3566(DRH)(WDW)**

Dear Judge Wall:

This firm represents the defendants, Active Window Productions and Mark Rosenstein in the above captioned matter.

Pursuant to this Court's Order dated March 6, 2003, plaintiff was to complete the production of documents on or before March 20, 2003, and further ordered that after the documents were produced the deposition of the plaintiff, Robert Novak, continue on March 28, 2003 at the courthouse.

To date, we have not received any documents from Mr. Novak although by letter of March 24, 2003, attached (misdated February 20, 2003), we again reiterated our request that Mr. Novak comply with this court's order.

In view of the failure by plaintiff to produce the required documents, defendants have been prejudice and we respectfully request that the court order plaintiff to produce the documents and further direct that the deposition now scheduled for March 28, 2003, be rescheduled to permit us to review the documents before the deposition.

Respectfully submitted,



ROBERT L. FOLKS

RLF/cil

Attachments

cc: Robert Novak (via fax) (w/o encl.)

ROBERT L. FOLKS & ASSOCIATES, LLP

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OF COUNSEL

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MAK 24
February 20, 2003

VIA MAIL & FACSIMILE (631) 789-9340

Robert Novak
1550 Sunrise Highway
Copiague, NY 11726

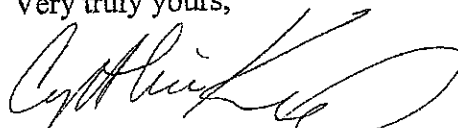
**Re: Robert Novak d/b/a Pets Warehouse.com v. Active Window
Productions, Mark Rosenstein, Cynthia S. Powers, Dan Resler,
Jared Weinberger, Thomas Barr, "John Doe" and "Mary Roe"
CV 01-3566(DRH)(WDW)**

Dear Mr. Novak:

Pursuant to the terms of Judge Wall's March 6, 2003, Order (copy annexed) your production of documents was due on or before March 20, 2003. I expected them to arrive here on March 21, 2003, or, at the latest, this morning if they had been properly posted on March 20, 2003. Please advise as to the whereabouts of these documents. The schedule was predicated on the idea that we would have this week to use the documents to prepare for the March 28, 2003, deposition.

Also enclosed is a revised Schedule A with the changes you requested. As I explained to you on the telephone, defendant cannot accede to your proposed changes in the first paragraph of the stipulation because it would involve defendant agreeing to the existence of a fact that defendant has no way of knowing. The requested change in the last paragraph of the stipulation (to add paragraph numbers from the document request) is meaningless since it applies by its very nature to each and every paragraph in the document request.

Very truly yours,


CYNTHIA A. KOURIL

CAK/cil
Attachments

DEFT EXHIBIT F

BEFORE: WILLIAM D. WALL

DATE: 3/06/03

F+D

UNITED STATES MAGISTRATE JUDGE

TIME: 10:30 a.m.

DOCKET NO. CV 01-3566

ASSIGNED JUDGE: Hurley

CASE NAME: Novak v. Active Window Publications

CIVIL CONFERENCE

Initial _____ Status X Settlement _____ Pretrial _____

Other: _____

APPEARANCES: Plaintiff Robert Novak

Defendant Cynthia Kouril

SCHEDULING:

1. The next Status conference will be held on May 2, 2003 at 11 a.m.

THE FOLLOWING RULINGS WERE MADE: The court's order of December 5, 2002 is vacated to the extent that the court was to appoint a referee. A referee will not be appointed. The plaintiff's continued deposition will be conducted in this courthouse on March 28, 2003 beginning at 10 a.m. Defendant shall submit Schedule A of the proposed protective order within 7 days. The plaintiff shall supply documents responsive to the original demand, including tax returns for the years covered in the complaint, within 14 days. All other applications contained in the plaintiff's January 22, 2003 letter motion are DENIED.

SO ORDERED

William D Wall

Defendant's Exhibit G

BEFORE: WILLIAM D. WALL

DATE: 5/02/03

UNITED STATES MAGISTRATE JUDGE

TIME: 11:00 a.m.

DOCKET NO. CV 01-3566

ASSIGNED JUDGE: Hurley

CASE NAME: Novak v. Active Window Publications

CIVIL CONFERENCE

Initial _____ Status X Settlement _____ Pretrial _____

Other: _____

APPEARANCES: Plaintiff Robert Novak

Defendant Cynthia Kouril

SCHEDULING:

1. The next Status conference will be held on August 8, 2003 at 10 a.m.

THE FOLLOWING RULINGS WERE MADE: Plaintiff shall serve a copy of his deposition transcript with errata sheet and any supplemental discovery on the defendant by May 30, 2003. Any party seeking to move for sanctions shall do so no later than June 20, 2003.

SO ORDERED

Defendant's Exhibit H

ROBERT L. FOLKS & ASSOCIATES, LLP

ATTORNEYS AT LAW

510 BROAD HOLLOW ROAD, SUITE 305

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CYNTHIA A. KOURIL

MELVILLE, NEW YORK 11747

(631) 845-1900

THOMAS L. COSTA
OF COUNSEL

TELECOPIER: (631) 845-8779

June 25, 2003

Honorable William D. Wall
United States Magistrate Judge
US Federal Courthouse
100 Federal Plaza
Central Islip, NY 11722-4438

Re: Motion for Sanctions and Injunctive Relief
Robert Novak d/b/a Pets Warehouse.com v. Active Window
Productions, Mark Rosenstein, Cynthia S. Powers, Dan Resler,
Jared Weinberger, Thomas Barr, "John Doe" and "Mary Roe"
CV 01-3566(DRH)(WDW)

Dear Judge Wall:

Today, I appeared before the Honorable Stan Bernstein with regard to the Voluntary Petition in Bankruptcy (# 03-083733) filed by Mr. Novak and which was the subject of Mr. Novak's last letter to this Court.

During today's appearance, Judge Bernstein dismissed the bankruptcy Case # 03-083733 *sui sponte*. He also observed on the record that he believed that Mr. Novak had filed that petition in bad faith and that Mr. Novak was using the Courts improperly.

We will be acquiring copies of the tapes of the proceedings and/or transcripts as soon as they are available and wish to supplement Defendants Motion for Sanctions and Injunctive Relief with such record as well as with the Order of the Bankruptcy Court and any accompanying decision, when such becomes available.

Respectfully submitted,



ROBERT L. FOLKS

CAK/cil
cc: Robert Novak

s:\rfolks\letters\Rosenstein

Defendant's Exhibit

I

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of:) Chapter 11
ROBERT NOVAK) Dkt. No. 03-83733

OSC why this case should not be dismissed because Debtor has a current Chapter 11 open (98-92318).
(11)

Memorandum in opposition by Debtor. (15)

United States Bankruptcy Court
Eastern District of New York
Long Island Federal Courthouse
290 Federal Plaza
Central Islip, New York

June 25, 2003
10:30 a.m.

B E F F O R E:

HONORABLE STAN BERNSTEIN
United States Bankruptcy Judge

A P P E A R A N C E S:

ROBERT NOVAK, *Pro Se*
Debtor
1550 Sunrise Highway
Copiague, New York 11726

ROBERT FOLKS & ASSOCIATES
Attorney for Creditor Active Window
Productions
510 Broadhollow Road, Suite 305
Melville, New York 11747
BY: ROBERT L. FOLKS, ESQ. *ORIGIN*

ORIGINAL

(516) 741-5342 Tankoos Reporting Co. (212) 349-9692

DEFENDANT EXHIBIT I

APPEARANCES (cont'd)

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
Eastern District of New York
Long Island Federal Courthouse
560 Federal Plaza
Central Islip, New York 11722
(631) 715-7800
BY: TERESE A. CAVANAGH, ESQ.

(516) 741-5342 Tankoos Reporting Co. (212) 349-9692

I N D E X

TESTIMONY

None taken

EXHIBITS

None marked

(516) 741-5342 Tankoos Reporting Co. (212) 349-9692

DEFENDANT EXHIBIT I

1 P R O C E E D I N G S

2 THE COURT: All right, Mr. Novak, let's
3 step forward.

4 COURT CLERK: State your appearances,
5 please.

6 MR. NOVAK: Robert Novak.

7 THE COURT: Mr. Novak, you can sit and
8 speak into the microphone. You can't stand above it,
9 because then I won't get anything.

10 MR. FOLKS: Robert L. Folks, Robert L.
11 Folks and Associates, --

12 THE COURT: Robert L. Folks..

13 MR. FOLKS: For the Creditor Active
14 Window Productions.

15 THE COURT: Active?

16 MR. FOLKS: Window Productions, Your
17 Honor.

18 MS. CAVANAGH: Terese Cavanagh, for the
19 Office of the United States Trustee.

20 THE COURT: And, Mr. Folks, how do you
21 spell your last name? F-O-U-K-E-S?

22 MR. FOLKS: F-O-L-K-S, Judge.

23 THE COURT: F-O-L-K-S. And, your law
24 firm is what?

25 MR. FOLKS: Robert L. Folks and

(516) 741-5342 Tankoos Reporting Co. (212) 349-9692

1 Associates.

2 THE COURT: All right.

3 MR. FOLKS: 510 Broadhollow Road,
4 Melville, New York.

5 THE COURT: All right.

6 And, what -- and Active Window
7 Productions, --

8 MR. FOLKS: Yes, Your Honor.

9 THE COURT: -- has a claim against Mr.
10 Novak?

11 MR. FOLKS: We were listed, Your Honor,
12 as a Creditor, as a result of a lawsuit pending in
13 this courthouse, which was brought by Mr. Novak, pro
14 se. It's one of twelve, approximately twelve cases
15 that Mr. Novak has brought in this courthouse, pro
16 se.

17 And, we have, during the course of that
18 litigation, --

19 THE COURT: Wasn't there -- I know there
20 were some matters that Mr. Novak referred to as
21 pending before Judge Hurley.

22 MR. FOLKS: Yes, Your Honor. We -- I
23 represent Active Window Productions, and that is one
24 of the matters that is pending before Judge Hurley.

25 THE COURT: Okay, and what's its status?

1 MR. FOLKS: Your Honor, as a result of
2 Mr. Novak's failure to produce and comply with court
3 orders regarding discovery, we sought from Judge
4 Wall, Magistrate Judge Wall, and obtained permission
5 to make a motion to have Mr. Novak sanctioned. And
6 further, to -- we sought injunctive relief by way of
7 both -- by way of -- of asking for Mr. Novak not to
8 be permitted to file any further lawsuits without
9 leave of the court, as a vexatious litigant.

10 Part of the sanctions that we sought were
11 attorney's fees for all of the motions that had to be
12 brought on before Judge Wall, and appearances when
13 Mr. Novak failed to -- to provide us with the
14 information that was directed by the Court.

15 THE COURT: Well, what was the
16 disposition of your motion?

17 MR. FOLKS: The motion is pending, --

18 THE COURT: Were sanctions granted or
19 not?

20 MR. FOLKS: -- Your Honor. It is -- it
21 has been filed. It is pending.

22 THE COURT: Okay, and how long has it
23 been pending?

24 MR. FOLKS: Just since Monday, Your
25 Honor.

1 MR. NOVAK: In violation of the automatic
2 stay, Your Honor.

3 THE COURT: Mr. Novak, when I need to
4 hear from you, you'll be given that opportunity to
5 speak. Don't interrupt.

6 MR. FOLKS: Your Honor, if I may --

7 THE COURT: So, you have a motion pending
8 before the Magistrate Judge, who has this matter on
9 referral from Judge Hurley.

10 MR. FOLKS: Yes, Your Honor.

11 THE COURT: And, you're seeking sanctions
12 for failure to produce.

13 MR. FOLKS: Well, we're seeking
14 sanctions, yes, for failure to produce and otherwise
15 comply with Judge -- Magistrate Judge Wall's direct
16 orders.

17 THE COURT: Okay.

18 MR. FOLKS: We wanted just to bring to
19 the Court's -- to this Court's attention one other
20 item.

21 THE COURT: Okay.

22 MR. FOLKS: In the course of the
23 litigation, it was determined that Mr. Novak had, in
24 his -- as an asset, a certain trademark, which he's
25 been using as a service mark and then was -- was

1 awarded a trademark, since approximately 1974. It
2 was part of that that he ran his business with, and
3 the dot-com, which he also runs.

4 What we noted in the prior filings in the
5 Bankruptcy Court, since 1993, and thereafter in 1997,
6 that this asset which he now claims is worth a
7 significant amount of money, was never listed as an
8 asset in any of the significant number of financial
9 filings which he made with this Court in connection
10 with that.

11 I bring this to the Court's attention
12 because it would -- by way of suggestion to Your
13 Honor, we would ask that the Court consider a
14 referral to the United States Attorney's Office.

15 (Pause)

16 THE COURT: Well, I don't know why you
17 need a referral from me. I assume you can go
18 directly to the U.S. Attorney's Office on your own.
19 I don't think a referral from this Court brings it
20 any greater visibility, I must say, than anybody
21 else.

22 MR. FOLKS: Well, we just want to bring
23 that --

24 THE COURT: I believe that it's -- I'd
25 like to believe that our referrals are taken more

1 seriously. Generally, we make the referrals through
2 the U.S. Trustee's Office, with respect to case
3 administration.

4 We don't have any investigative resources
5 and sometimes, unfortunately, we try to rely upon the
6 U.S. Trustee's relationship to the U.S. Attorney's
7 Office, as fellow offices of the same Department of
8 Justice. And, Ms. Cavanagh has had a fair degree of
9 success in getting the attention of the U.S.
10 Attorney's Office.

11 But, in any event, I think that's a
12 collateral matter to what I have before me. I have
13 read Mr. Novak's papers this morning. And, I am not
14 persuaded that this case should be administered as a
15 Chapter 11.

16 First of all, I don't understand this
17 concept of an unincorporated association. All I know
18 is that Mr. Novak is the Debtor here, or the
19 purported Debtor. And, I also know that he has a
20 Chapter 11 case that's still open. And, it's pending
21 before Judge Gershon, and she hasn't rendered her
22 decision.

23 So, I don't know how this Court can
24 administer two Chapter 11s pending at the same time.
25 And, we've had that problem in Chapter 13 cases, and

1 other cases. This isn't a ministerial act.

2 This isn't a situation in which all of
3 the work in the case has been accomplished and
4 there's some delay in the Clerk's Office in closing
5 the case. This is a case that virtually was re-
6 opened in order to deal with an issue of fees. I
7 ruled on that, and Mr. Novak decided to appeal my
8 decision. And, it was on a remand from the District
9 Court, and several judges have recused themselves
10 from cases with Mr. Novak.

11 But, when I looked at his case, it
12 doesn't appear to me that there's any bona fide
13 justification for this Eleven. But, even if there
14 were, I can't entertain two Elevens at the same time.
15 And, he's created this problem for himself.

16 If you want to prosecute your appeal,
17 fine. And, there are certain consequences that flow
18 from that. We're not interested in chilling your
19 rights of appeal. But, I don't know what kind of
20 jurisdiction I have in a case where it's still open,
21 and it's open because of acts taken by the Debtor,
22 not acts taken by the Clerk or anybody else.

23 And, I understand his point about the
24 orders, but by virtue of his initiating this dispute,
25 and further prosecuting it, he's created this

1 situation for himself.

2 Now, perhaps Judge Gershon will render a
3 decision, and then there will only -- and, assuming
4 -- I don't know what the decision could be. It could
5 be remanded to this Court. It could be remanded to
6 another Court. I can't begin to speculate on what
7 Judge Gershon will do, with respect to this matter.

8 So, I don't see how I can entertain
9 jurisdiction in a second Chapter 11 while I still
10 have an Eleven open, and open by virtue of an appeal.
11 The Clerk's Office will not close a case because of a
12 pending appeal. It can be a Chapter 7 case, and the
13 Debtor may have received a discharge, and then there
14 is a complaint for a determination of non-
15 dischargeability, which is tried before the Court,
16 and one party takes an appeal, and the Clerk, under
17 those circumstances, as a standard procedure, will
18 not close a Chapter 7 case, even after the Trustee
19 filed his final report.

20 And so, this creates administrative
21 difficulties for the Court, and it has nothing to do
22 with the controversy with Mr. Folks's client, or
23 problems with any court. And, as I look at this,
24 this is a collateral attack on an order of an Alabama
25 State Court. And, under the *Rooker/Feldman* doctrine,

1 I can't serve as an appellate tribunal. So, even on
2 the face of this complaint -- I mean even on the face
3 of this case, it doesn't appear to be bona fide.
4 It's asking this Court to step into a controversy
5 arising out of an Alabama court, where Mr. Novak has
6 rights, presumably, to prosecute his appeals through
7 the Alabama State Court system. He can't use
8 bankruptcy as a way of re-litigating matters that are
9 determined by judgments in another court.

10 So, one, because there is already an
11 Eleven open; two, on the face of his complaint, which
12 I read, and his characterization in his pleadings,
13 he's seeking to use this Court improperly. So,
14 that's another independent ground for dismissing this
15 case.

16 Mr. Novak?

17 MR. NOVAK: Well, if the case is still
18 open, how come I'm not afforded the protections of
19 the automatic stay, Your Honor?

20 To preclude me from those protections --

21 THE COURT: I'm not -- look, I'm not
22 serving here as your legal counsel. You want to make
23 an argument, deal with it.

24 MR. NOVAK: Okay, the argument --

25 THE COURT: But, I don't need you --

1 MR. NOVAK: -- the --

2 THE COURT: -- to start asking me twenty
3 questions, asking free advice from this Court.
4 That's not the way it works.

5 (Pause)

6 MR. NOVAK: The case was never re-opened.
7 There is nothing in the docket --

8 THE COURT: How do I determine a matter,
9 if the case is not re-opened? I can't --

10 MR. NOVAK: Judge, --

11 THE COURT: I cannot deal, Mr. Novak, --

12 MR. NOVAK: -- Judge, can I speak --

13 THE COURT: -- with an independent --

14 MR. NOVAK: -- uninterrupted, please?

15 THE COURT: -- determination. If a
16 controversy arises out of a case, the only way I can
17 hear it is to re-open the case. That's a logical
18 prerequisite.

19 MR. NOVAK: There's no indication of that
20 in the docket.

21 THE COURT: Okay. Well, then I must have
22 been just sitting here whistling Dixie for several
23 months, and entertaining numerous pleadings that you
24 filed, numerous hearings, --

25 MR. NOVAK: There was only one --

1 THE COURT: -- and the disposed of the
2 matter as I thought appropriate.

3 MR. NOVAK: There was --

4 THE COURT: You disagreed. You have a
5 right to disagree. You have a right to take an
6 appeal. You took an appeal. It's still pending.

7 Do you want to appeal my order dismissing
8 your case? You know how to go to the District Court.

9 MR. NOVAK: Is it -- is it -- is it this
10 Court's intention to just kill the case? Is that
11 what we're here for?

12 THE COURT: It's my intention to what?

13 MR. NOVAK: Kill the case. Can I be
14 heard? Under § 1109, I am a Chapter 11 Debtor, as of
15 now. I'd like to be heard. I don't think I -- I
16 don't think you're allowing me --

17 THE COURT: I've read your papers, --

18 MR. NOVAK: -- to complete a sentence.

19 THE COURT: -- Mr. Novak.

20 MR. NOVAK: I'd like to complete a
21 sentence.

22 THE COURT: Mr. Novak, I've read your
23 papers. Do you have anything to add to your papers?

24 MR. NOVAK: Yes, I do. I'd --

25 THE COURT: Why weren't they --

1 MR. NOVAK: -- like to say it.

2 THE COURT: -- in your papers?

3 MR. NOVAK: I'd like to make a complete
4 record, so if this Court forces me to the ultimate
5 requirement of an appeal, the record is complete.

6 THE COURT: Mr. Novak, I determine when
7 the record is complete. You don't.

8 I have read your papers. I have already
9 given you my ruling. I am dismissing this case for
10 two reasons.

11 One, there's an open Chapter 11 case,
12 based upon an appeal pending before Judge Gershon.

13 Two, based upon my review of the
14 pleadings, this is not a case that can lead to a
15 confirmation of a feasible plan. I view this as a
16 case filed in bad faith, because you're seeking to
17 use this Court to overturn orders of an Alabama State
18 Court.

19 MR. NOVAK: I respectfully disagree.
20 That was not the intent of filing this case.

21 I further respectfully disagree in the
22 fact that it was not filed in good faith. It was
23 filed -- not in bad faith. It was filed in good
24 faith.

25 If the Court read my affidavit, --

1 THE COURT: I read everything you have
2 submitted, Mr. Novak.

3 MR. NOVAK: In my schedules, I explained.
4 You have not given this Debtor a chance to even
5 propose a plan. And, you're saying it's -- it --
6 this is premature. This case hasn't ripened to the
7 point for the Court to take that position. And, I
8 think it --

9 THE COURT: Mr. Novak, --

10 MR. NOVAK: -- I think it's unfair --

11 THE COURT: -- the case has ripened to
12 the point. The case is dismissed.

13 MR. NOVAK: And, I --

14 THE COURT: I'm going to issue an order.
15 This matter is concluded.

16 Thank you.

17 MR. NOVAK: And, I -- I think the reason
18 --

19 THE COURT: This matter is concluded, Mr.
20 Novak.

21 MR. NOVAK: Under § 1109, I have a right
22 to be heard.

23 THE COURT: Mr. Novak, this case is
24 completed. You don't have anything further to say --

25

1 MR. NOVAK: I have no rights?

2 THE COURT: Mr. Novak, I have already
3 ruled.

4 MR. NOVAK: You asked me if I had
5 anything to add, --

6 THE COURT: Would you call the U.S.
7 Marshal, please?

8 COURT CLERK: [inaudible]

9 MR. NOVAK: You want me to leave, I'll
10 leave.

11 THE COURT: I think it would be
12 advisable.

13 MR. NOVAK: All right, Your Honor, I'll
14 leave. We don't need Marshals.

15 (Whereupon, at 11:15 a.m., the proceeding
16 was concluded.)

17 * * * * *

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, June Accornero, do hereby certify that I typed the proceeding In the Matter of Robert Novak, taken on June 25, 2003, before The Honorable Stan Bernstein, at the United States Bankruptcy Court, Eastern District of New York, Central Islip, New York, from a tape provided by the Court, and that this is an accurate transcript of what happened at that time and place.


June Accornero

(516) 741-5342 Tankoos Reporting Co. (212) 349-9692

Defendant's Exhibit J

BEFORE: WILLIAM D. WALL

DATE: 8/8/03

UNITED STATES MAGISTRATE JUDGE

TIME: 10:00 a.m.

DOCKET NO. CV 01-3566

ASSIGNED JUDGE: Hurley

CASE NAME: Novak, et al. v. Active Window

CIVIL CONFERENCE

Initial _____ Status X Settlement _____ Pretrial _____

Other: _____

RECEIVED
U.S. DISTRICT COURT, E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND COURTHOUSE

★ AUG 26 2003 ★

ENTERED

★ _____ ★

APPEARANCES: Plaintiff NO APPEARANCE

Defendant Cynthia Kouril (Active Window and Rosenstein)

SCHEDULING:

1. The next Status conference will be held on October 30, 2003 at 11 a.m.

THE FOLLOWING RULINGS WERE MADE: Plaintiff has failed to appear at this status conference scheduled in this court's order of May 2, 2003. The defendant is awarded the cost of her appearance and shall submit an affidavit of services by August 29, 2003. The court reserves decision on defendant's motion for sanctions, which is unopposed. The court notes for the plaintiff's information that there is no stay in effect. Should plaintiff fail to appear at the next conference the court will recommend dismissal of the action.

SO ORDERED

Defendant's Exhibit K

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

cm
d+f

DEC 12 2003
12/12/03

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

ROBERT NOVAK,

Plaintiff,

ORDER

-against-

CV 01-3566(DRH)(WDW)

ACTIVE WINDOW PUBLICATIONS, INC., et al.,

Defendants.

X

WALL, Magistrate Judge:

Before the court are three motions in this contentiously litigated matter. First, the defendants have moved for sanctions, including dismissal of the complaint or preclusion of evidence. Second, the plaintiff has cross-moved for sanctions. And third, the plaintiff seeks reconsideration of an order of the court awarding sanctions to the defendants for Mr. Novak's failure to appear at a conference.

Defendants' Motion and Plaintiffs' Cross Motion for Sanctions

The motion and cross motion for sanctions are based on expedited discovery granted to the defendants on the issue of whether the plaintiff is the true party in interest, or whether corporate entities exist that are the true parties in interest. On their motion, the defendants argue that Mr. Novak has obstructed the "expedited" discovery in numerous ways, including misleading answers about income tax returns, and generally evasive and non-responsive deposition answers.

Mr. Novak, in opposition and in support of his own motion, argues that defense counsel has misled the court, has conducted abusive discovery, and has failed to ask the right questions that would have elicited helpful answers. In reviewing the record before it, the court must agree

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with the defendants that the pro se plaintiff, Robert Novak, willfully avoids giving information and does not answer simple questions. The transcripts of his depositions demonstrate his evasiveness and attempts at "cleverness" in avoiding straightforward answers to his questions. His varied answers to the questions about the existence of relevant income tax returns also disturbs the court. Nonetheless, the court does not find sufficient flouting of this court's orders or of the federal rules to warrant the most severe sanctions sought by the defendants, that is, dismissal of the action.

Discovery on this issue has gone on long enough, and both parties have had ample opportunity to seek, or to provide or object to the production of, all relevant information and documents. Thus, the court will grant the alternative relief sought by the defendants: the plaintiff, who represents himself as fully cooperative in the discovery process, has presumably produced all of the information required of him under the applicable federal rules, and is precluded from producing into evidence, at trial or in opposition to a motion for summary judgment, any information that he failed to disclose regarding the real party in interest issue.

The court declines to grant the injunctive relief sought by the defendants, which would require Novak to obtain the approval of the court prior to instituting suit against defendants Rosenstein or Active Window Productions. Any application for such relief must be made to District Judge Hurley, in accordance with his Individual Rules and the Federal Rules.

The plaintiff's motion for sanctions is denied in all respects. Moreover, Novak's request that he be allowed to hire counsel to argue only this issue is denied. He can proceed pro se or he can have counsel, but he can't do some of each.

Plaintiff's Motion to Reconsider Sanctions

On August 8, 2003, Mr. Novak failed to appear for a status conference, and the court granted attorney's fees to the defendants' attorney, who did appear. Novak now seeks to have that sanction removed. He explains that he did not attend the conference because he believed that the automatic bankruptcy stay was still in effect. That issue was resolved by the court in an order dated August 25th, with a finding that there was no stay in effect at that time. However, the court accepts Novak's claim that he believed the stay to be in effect, especially in light of his regular appearances prior to August 8th. Thus, the court will rescind the award of attorney's fees to the defendants for the August 8th non-appearance of Mr. Novak.

Conclusion

This lawsuit must proceed to a conclusion. The parties are directed to submit to the court, in writing, a concise, no longer than two pages, double spaced, statement of the discovery that they believe is outstanding, along with a statement as to any motions they anticipate making before trial. These statements must be submitted to the court and served on the adversary no later than January 5, 2004. After reviewing them, the court will establish new, firm deadlines and schedule appropriate conferences. The court will not tolerate any more dilatory behavior or flouting of the discovery rules from either side, and Mr. Novak is warned that his pro se status does not exempt him from following those rules like all other litigants. Both parties should consider themselves warned that the court will not hesitate to impose sanctions in the future if their discovery obligations are not strictly adhered to.